

City Council Special and Regular Meetings, November 28, 2000

Twin Pines Senior and Community Center, 1223 Ralston Avenue

SPECIAL MEETING – 6:35 P.M.

CLOSED SESSION

A. Public Employee Evaluation pursuant to Government Code Section 54957

1. City Manager

Attended by Councilmembers Wright, Cook, Warden, Rianda, Hahn, City Manager Kersnar and City Attorney Savaree. City Clerk Kern was excused from attending.

Adjournment at this time, being 7:00 P.M. this Closed Session was adjourned.

Meeting not tape recorded

Kathy Kern

Belmont City Clerk

REGULAR MEETING - 7:35 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Wright, Cook, Warden, Rianda, Hahn

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Kersnar, Assistant to the City Manager Bridges, City Attorney Savaree, Interim Community Development Director Macris, Finance Director Fil, Public Works Director Curtis, Interim Police Chief Mattei, Police Commander Woods, Fire Chief Jewell, City Clerk Kern

REPORT FROM CLOSED SESSION

Mayor Hahn announced that direction was given, but no action taken.

PUBLIC/COUNCIL COMMENTS

Ms. Keogh, 2101 Carlmont Drive, representing Belmont's 75th Anniversary Committee, thanked the Council for their support toward the celebration to be held next October. She presented Council with their 75th Anniversary historical calendar. She stated that these would be available for sale at various locations throughout the City.

Ms. Kartman, 508 Mountain View Avenue, referred to Mayor Hahn's inaugural speech in which she stated that Belmont lacked a vision. Mrs. Kartman said the residents on the East Side of Belmont always had a vision, especially for Old County Road. She said that since 1981, when the Redevelopment Agency was formed to take care of the blight in this area, not much had been accomplished. She said the residents hoped that funding would be used to underground the utilities in that area and improve the street lighting. She said many of the residents

in her area favored a mini park for the plaza area next to the train station with trellises, benches and landscaping.

AGENDA AMENDMENTS

Mayor Hahn announced that agenda item 4-K (appt. of Community Development Director) would have the salary range added to the Resolution. Minutes of November 14th to be amended to reflect vote for Vice Mayor as 3-1(Rianda, no; Hahn ,recused).

CONSENT CALENDAR

Approval of meeting minutes: Regular Meeting November 14, 2000.

Approval of Warrant List Dated: November 6, 2000 in total amount of \$695,252.61 and dated November 13, 2000 in total amount of \$40,460.65.

Written Communication 1). Rec. 11/13 from PUC re. audit A.97-12-020, I.97-11-026, I.97-11-026, A.94-12-005, I.95-02-015, and A.00-07-043; 2). Rec. 11/15 before the PUC applic of Zebra Airport Shuttle; 3). Rec. 11/16 applic. of Seniors Airporter Shuttle.

Motion to approve Claims Management Report.(none)

Resolution No. 8893 regarding the City's (its) Intention to Issue Tax-Exempt Sewer Revenue Bonds and Authorization to Reimburse Qualifying Sewer Facility Expenditures, including SBSA Stage 2 Capacity Rights, in Advance of Bond Sale.

Resolution No. 8894 approving an additional Payment of \$6,799 for PEN TV.

Resolution No. 8895 approving a revised professional services agreement with T.Y. Lin International, Inc. to provide consulting engineering services for conceptual design of U.S. Highway 101 Bicycle/Pedestrian Bridge Project, City Contract No. 433. (NTE \$149,887).

Resolution No. 8896 authorizing the filing of an Application for Transportation Development Act, Article 3(TDA3) funding with the City/County Association of Governments of San Mateo County and the Metropolitan Transportation Commission (MTC) for a U.S. Highway 101 Bicycle/Pedestrian Bridge Project in the amount of \$300,000 and stating the assurance of the City of Belmont to complete the project.

Resolution No. 8897 accepting work, approving Contract Change Order No. 1, and authorization to issue Notice of Substantial Completion for the Water Dog Lake Drain, Phase I, City Contract No. 423.(Casey Construction)

Resolution No. 8898 authorizing the filing of an Application with Metropolitan Transportation Commission for Traffic Engineering and Technical Assistance Program to update the timing plan for Traffic Signals on Ralston Avenue between Sixth Avenue and Christian Drive.

Resolution No. 8899 confirming the appointment of Craig Ewing as Director of Community Development for the City of Belmont.

Resolution No. 8900 authorizing the City Manager to pay revised FY 2001-01 Animal Control Services Costs and related Countywide Trunked Radio Replacement Charges.

Resolution No. 8901 of Appreciation for Joan Dentler outgoing Executive Director Belmont Chamber of Commerce.

Motion to cancel the second Council meeting in December because of the holiday season.

Consent Calendar adopted as amended. Moved by C. Rianda, seconded by C. Warden, and approved unanimously, by show of hands.

PUBLIC/HEARINGS

Public Hearing for consideration of a Resolution approving a Franchise Agreement and the granting of a Franchise to Residential Communication Network (RCN) for cable television, telephone services and internet access within the City of Belmont.

City Attorney Savaree introduced Mr. G. Ruben, SAMCAT Attorney and explained that he had been involved in the negotiations on this agreement and would answer any Council questions on this subject.

Interim Assistant to the City Manager Bridges introduced Mr. C. Pelnick, Telecommunications Management Consultants, who had worked on the contract negotiations and Mr. Keiota, Public Affairs Manager for RCN. He then provided highlights of the report which included the term of 11 years to complete construction; a 5% gross cable fee, which was the same as the AT&T fee; reimbursement of up to \$20,000 negotiation fees to cover the cost of the contract negotiator; \$250,000 bond for system construction; a \$50,000 irrevocable letter of credit; \$1,000 in liquidated damages per day for construction delays, or \$200 per day for non-construction violations. RCN agreed to pay \$.25 per subscriber per month for Public, Educational and Governmental Access (PEG) costs. They would also provide free cable and Internet services to over 30 City, County, schools and other governmental agency facilities in Belmont. He stated that there were customer service standards called out in the agreement and a penalty would be assessed for failure to comply.

Mr. Bridges explained that Attorney Rubens had determined that the Council must consider all the findings outlined in the agreement, but did not have to make all the findings to adopt this Franchise Agreement. He said they would underground in areas that were undergrounded, and provide overhead lines where there was overhead lines. If an area was undergrounded in the future, RCN would be required to underground their equipment. Mr. Bridges explained that there would be one piece of equipment per 150 homes for overhead and underground service. He stated that RCN had agreed to a five year warranty on any streets that need to be trenched to lay cable. RCN would supply maps for location of equipment, and have agreed to work with the City Public Works Department and the residents for placement of equipment. They will notify residents 72 hours before the planned construction, and a door hanger the day of the construction. Mr. Bridges noted that RCN had been given a list of the homeowners groups to contact to explain this process and the staff had sent the report to each group.

Mr. Keito, Manager of Public Affairs for RCN introduced himself and distributed information about RCN and stated he would be happy to answer questions.

In response to C. Cook, Attorney Ruben explained that if the Franchise Agreement was not approved, RCN could try to come in under the Federal Communications Act of 1996 as an OBS provider which did not provide for customer service standards. He reported that the Council did not have to make all the findings because the Communications Act did not require it. The caveat was that the finding could not be discriminatory or create a barrier to entry.

Mayor Hahn opened the public hearing.

Ms. Kartman, 508 Mountain View Avenue, expressed concerns about the visual pollution that will be caused by attaching another wire or utility box to the pole in her back yard. She distributed photos showing the overloaded poles. Mrs. Kartman said she hoped the City would be reimbursed to make this disruption and visual pollution worth it.

Ms. Carner, 2215 Coronet Blvd, requested that the Council deny this franchise because this equipment would be outdated in a few short years. She said the city would be dug up again and ruin all the progress the city had made in beautification. Ms. Carner said RCN should provide a central location for this equipment to be used by residents that could not otherwise afford their services. She said the City had to protect the property values and trees. She explained that to prevent disease, the Oak trees should not be touched. Ms. Carner said the mess and disruption to property owners was not worth having this cable company provide service to the City. She said the service should be provided to the commercial and business owners, not residential owners. Ms. Carner encouraged the Council to vote against this franchise.

Mr. McLaughlin, 3313 Plateau Drive, Boardmember of the Plateau-Skymont Neighborhood Association, expressed concerns about this proposal. He said the two neighborhood associations that were in favor of this project would have their lines underground and would not have the visual impacts like the rest of the neighborhoods. Mr. McLaughlin said that the poles had a number of wires and transformers attached and this equipment would look massive. He said there did not appear to be much recourse to the neighbors if they did not like the location of the boxes in front of their homes. He said the equipment site map would not be filed until the franchise agreement was signed, so the location of these proposed boxes was unknown. He said it did not appear that RCN was offering any added services, and most citizens could not afford these features. Mr. McLaughlin said the utility companies did not care about the aesthetics of the City and suggested that the Council postpone until it is determined if this new franchise would generate enough revenue to make it worthwhile.

Mr. Bauer, 1027 Tahoe Drive, said he would like to see the competition, but would like the concerns expressed by the other speakers mitigated. He said he was concerned that if we did not approved this franchise, RCN could come in anyway, with little or no control over this operation.

Mr. Bauer encouraged the staff to request RCN to consider the aesthetic and environmental concerns of the citizens with this agreement.

Attorney Rubens said the agreement had been carefully negotiated, and the Council needed to be careful that any further mitigations requested not cause a barrier for entry for them. He said the aesthetics and location of the equipment could be regulated. He said the location of equipment could be conditioned on approval by staff to be compatible with the neighborhood.

Mr. Kranen, 1902 Notre Dame Avenue, asked if RCN would provide open access to internet service providers (ISP) other than their own and asked if this could be added to the franchise agreement if possible.

Mr. Pelnick, Telecommunications Management Consultants, reported that there was a legal question on whether this kind of access could be legislated. He said there was a provision in the agreement that stated that if we had the right to require it, then we reserve all rights. He said the FCC was coming out with a national ruling, to decide if Internet access was a cable service or not.

Mr. Kranen said he disagreed. He said that if there was a clause in the agreement that required open access and they sign it, then he felt the agreement was binding. He said he would like to know which direction they were taking.

Attorney Ruben said the law was unclear at this time as to whether we could require open access or not. During negotiations RCN indicated they would not agree to that language. He said this agreement stated that once the issue was settled, then we could require it.

On motion by C. Warden, seconded by C. Rianda, and approved unanimously, to close the public hearing.

C. Warden expressed his concern about trenching on streets that had been paved in the last three years. He asked what authority the City had to not allow trenching on streets for undergrounding, if the street had just been paved.

Attorney Ruben said there were some provisions in the agreement regarding warranties on streets.

C. Warden said he would like a provision in all the franchise agreements to prevent trenching on freshly paved streets.

Attorney Ruben said RCN would be approaching the overhead areas first, which may allow time to enact a trench cut ordinance. He said the ordinance must be adopted before RCN applies for an encroachment permit for the standards to apply and not be a barrier to entry.

Mr. Keito, Manager of Public Affairs for RCN stated that they were also concerned about trenching right after a street had been paved. He said they would work closely with the City to make sure they would coordinate their efforts.

Public Works Director Curtis said that the City could create some sort of ordinance using some of the ingredients of the Trench Cut ordinance.

In answer to C. Hahn, Director Curtis said that he thought all the major streets would be subject to trenching.

In response to C. Wright, Public Works Director Curtis explained that the mechanics had not been worked out to work with RCN on these environmental and aesthetic issues. He said they would expect some forward planning with RCN with the cutting of the streets.

Mr. Pelnick explained to C. Rianda that the only difference with the Redwood City agreement was that the City Manager's office would be responsible for construction and equipment locations in Redwood City. He noted that the original agreement held RCN to a two year warranty on the roads and this was renegotiated to a five year warranty. He stated that the City could not create barriers to entry for RCN, if AT&T was not held to this standard.

C. Rianda stated she would like to put a ten year warranty on both entities.

Mr. Pelnick said the City had to look at both entities equally. He said a trenching ordinance should be put in place as soon as possible. He said the best approach to insure that the citizens were involved in the process was through the permitting process. Mr. Pelnick explained that pole owners determined what went on the poles, not the City. He said the City could attach reasonable conditions for the work that would be done underground. Mr. Pelnick noted that the City would have recourse for property damage with the RCN letter of credit which would pay for these damages.

C. Rianda asked that the word "shall" be added to the sentence regarding notification to homeowners when trees needed to be trimmed.

City Manager Kersnar stated that the Franchise Agreement required that RCN provide notification.

Council concurred to give policy direction to staff to require RCN to provide notification to the residents regarding any tree trimming on private property.

Mr. Pelnick said that a one page ordinance could be enacted by the City to call out the fact that no one shall dig up a street in less than three or five years after repaving.

C. Cook stated that there appeared to be consensus that the City desired to have RCN provide competition for services. She said it was frustrating, in this age of high technology, that we still needed these physical structures cluttering up the neighborhoods. She said she wished there were more of the town that was undergrounded to prevent this visual pollution. She said she wanted to be sure that every enforcement tool available was in place to ensure that RCN would work with the residents and the City to deal with the physical locations of this equipment. C. Cook said that by approving this agreement, the City had some control over RCN on the aesthetics of the project.

Action: on motion by C. Cook, seconded by C. Wright, and approved unanimously by show of hands to adopt:

Resolution No. 8902 making certain findings and approving a Franchise Agreement with RCN Telcom Services, Inc. for a cable system in Belmont.

Public Hearing for consideration of a Resolution accepting \$100,000.00 from the State of California Citizens Option for Public Safety (COPS) Program and augmenting the General Fund in that amount.

Interim Police Chief Mattei explained that the City of Belmont had been allocated \$100,000 from the Cops Grant Program. He recommended that the funding be allocated for one sworn police officer; continue with the fourth Community Service Officer position for this year; over-time for sworn Police Officer; a Community Service Officer position and purchase of one police dog.

Mayor Hahn opened the public hearing.

On motion by C. Cook, seconded by C. Wright, and approved unanimously, to close the public hearing.

Action: on motion by C. Rianda, seconded by C. Warden and approved unanimously, by show of hands, to adopt:

Resolution No. 8903-accepting \$100,000 from the State of California Citizens Option for Public Safety (COPS) Program and augmenting the General Fund in that amount.

OLD BUSINESS

Discussion and direction regarding Scope of Work for San Juan Plan, and consideration of Resolution authorizing and directing the City Manager to enter into an agreement with Crawford Multari & Clark Associates to provide professional consulting services for preparation of the San Juan Hills Lot Merger Study and Program. (NTE \$49,905) and Discussion and direction regarding proposal for hiring of outside counsel for assistance on Land Use Issues.

C. Rianda recused herself from the discussion regarding the Lot Merger Study.

Interim Community Director Macris explained that a lot merger study for the San Juan Hills Area had been budgeted FY 2000. She explained that she had provided three options for Council consideration. 1). Lot Merger

Study; 2). Lot Merger Study which would be the basis for a revision of the San Juan Hills Area Plan; 3). Defer action and send out an RFP for a complete revision of the San Juan Hills Area Plan.

Community Development Director Macris stated that the staff recommended Option 2, because the information would enable the City to reduce development potential by merging lots. She noted that the San Juan Plan had a policy that indicated that merging lots should be done. This would allow that policy to be implemented.

Community Development Director Macris stated that an urgency ordinance prohibiting development would need a four-fifths vote. It could be extended for a period of up to two years if noticed and considered at a future meeting. She said the consultant would have this lot merger work completed by July, 2001. Interim Community Development Director Macris said that if an urgency ordinance was adopted, Council would have to state that a revision of the plan was being undertaken. This action would stop any development permits in the San Juan area. She said there were proposals in the planning stages at this time for 40 housing units and roadways to access these lots.

In response to C. Warden, Interim Community Development Director Macris stated it was possible to revise the San Juan Plan and do the lot merger study as parallel projects.

In response to C. Wright, Interim Community Development Director Macris stated that the extra \$50,000 for revision the San Juan Plan would include amendments to the policies and would require more community input.

City Attorney Savaree reviewed the two law firms that she had contacted that specialized in land use issues. She recommended Attorney Colantuono of the firm of Richards, Watson & Gershon, who had helped the City earlier this year with the changes in the sewer ordinance.

In response to C. Rianda, City Manager Kersnar stated that he thought it was advisable to engage Attorney Colantuono to help with San Juan issues and then expand his scope of work.

City Attorney Savaree stated that she thought Mr. Colantuono would help with any type of land use questions.

City Manager Kersnar noted that an additional \$50,000 to do a San Juan Plan update concurrently with the lot merger study, would require a budget amendment.

In response to C. Cook, Interim Community Development Director Macris stated that if Council decided to proceed with the lot merger study and a San Juan Plan update, staff would have to prepare a RFP and determine which fund this consultant would be paid from. She said a new work plan would have to be revised.

C. Warden stated that he would like Council to set some policy issues regarding the direction for the San Juan Plan.

C. Hahn stated that staff had suggested a subcommittee to work on these issues, and she stated that she would like to be on that subcommittee with the Vice Mayor, if Council concurred.

City Manager Kersnar suggested that if Council was looking toward developing an interim ordinance, the lot merger study should be identified as Phase I of the development of a San Juan Hills Plan. He said the Council committee could be assigned to this task.

C. Cook said she would like to have a work plan come to Council to explain all the pieces fit together, so she had a better understanding of the direction this plan was taking. C. Cook stated she would like to see how this project fit with all the other projects that had been identified already. She said she would like the community involved in the process also.

C. Hahn stated that the subcommittee could report back with this information.

Action: on motion by C. Warden, seconded by C. Cook, and approved unanimously, by show of hands, 4-0 (Rianda, recused) to adopt:

Resolution No. 8904 authorizing and directing the City Manager to enter into an agreement with Crawford Multari & Clark Associates, to provide Professional Consulting services for preparation of the San Juan Hills Lot Merger Study and Program.

Council concurred that the Mayor and Vice Mayor serve on a subcommittee to address potential policy changes to the San Juan Plan and that staff proceed with Option 2 to proceed with the lot merger study and use this information as a basis for a revision of the San Juan Hills Area Plan.

Council agreed that the Lot Merger Study be kept to the timeline outlined in the proposal

Action: Motion by C. Wright, seconded by C. Cook, and approved unanimously, by show of hands, to approve retaining Attorney Colantuono, of Richards, Watson & Gershon as outside Counsel to work on Land Use issues.

Consideration of Resolution authorizing an amendment to the agreement between the Belmont Redwood Shores Elementary School District and City of Belmont.(Fox Community Park).

Attorney Orton explained this first amendment between the City and the Elementary School District regarding the Fox Community Park which called for the payment of \$38,000 to the School District for the construction and maintenance of a play structure.

In answer to C. Warden, Attorney Orton explained that the School District had requested language in the agreement that would allow them to relocate the play structure if they needed that site at a later time. He noted that protection was built into the agreement that they would have to provide suitable replacement equipment. He said 35 years would be the outside timeline for play equipment to be safe.

Attorney Orton stated that if the Council adopted this agreement, it would supersede the previous agreement for the park and therefore we would give up our rights to that land.

C. Hahn stated that there were two items in the agreement that she felt would not work in the best interest of the City: 1). relocation of the park; and, 2). Retaining the play equipment for 35 years.

Attorney Orton explained that the agreement did not call for this equipment to be placed in any particular location on the Fox site, and the public would have access to the equipment during non-school hours.

C. Hahn stated that if the School District was being locked into a term of years, then she felt the equipment should not be relocated. She said she did not feel these terms met the best interest of the City.

C. Rianda said a suggestion was made during the meeting in the Spring that funding be given to the School District to develop an alternate site for the park. She said she thought the Council had voted to provide the School District with \$38,000 with no strings attached, and she did not think this amendment was necessary. C. Rianda said it did not seem reasonable to hold the District to a 35 year agreement.

C. Hahn said she could not understand why we had to have an amendment to an agreement that was not going to be executed. She said it would be better if it was null and void with a stipulation to the Court that we have agreed to give the School District \$38,000 for a play structure and nullify the 35 year provision.

Attorney Orton explained that there was no obligation on the City for 35 years. He said the court could be advised that the contract had been rescinded and \$38,000 would be paid to the School District.

In response to C. Warden, Attorney Orton explained that there was no additional burden on the City by signing this agreement. He said the burden was on the School District. He stated that this first amendment clarified how the money would be used.

C. Hahn stated that she would like to remove the language that would allow the School District to move the play equipment.

Attorney Orton stated they the School District would not agree to this amendment.

C. Hahn stated she would like to add a clause in the agreement that stated that the City was released from all obligations now and in the future.

Attorney Orton stated that this clause was not necessary, because the agreement did not obligate the City.

C. Warden made a motion to authorize the agreement to the School District as presented. This motion was seconded by C. Wright.

In response to C. Hahn, Attorney Orton stated he did not think any additional language was necessary. He said he felt this agreement stated how the \$38,000 should be used.

C. Cook called the question to vote on the motion on the floor, which was approved by voice vote, 4-1, (Hahn, no).

Action: on motion by C. Warden, seconded by C. Wright, and approved, 4-1 (Hahn, no) by show of hands to adopt:

Resolution No. 8905 authorizing an amendment to the Agreement between the Belmont-Redwood Shores Elementary School District and the City of Belmont.

C. Rianda stated that she would have liked a five year guarantee written into the agreement because she thought 35 years was too long.

C. Hahn stated that she did not object to the \$38,000 payment. She objected to the terms and conditions of the agreement and the fact that her thoughts were not satisfactorily represented in the agreement to state that this did not obligate the City in the future.

C. Rianda left the meeting, at this time, being 9:50 P.M.

C. Rianda returned at 9:55 P.M.

NEW BUSINESS -

Discussion and direction regarding a proposal by San Mateo County Convention & Visitors Bureau to form a Countywide Tourism Business Improvement District and consideration of adoption of Resolution consenting to formation of the San Mateo County Tourism Business Improvement District.

Ms. LeClair explained the BID program and stated that this was the overwhelming suggestion of the hotel and tourism members of the Board. She said these assessments would be used to market the County through the Convention and Visitors Bureau. She said these assessments were as low as \$.15 to \$.25 per night.

She explained that Burlingame would be the lead Agency and would hold the formal protest hearing on December 13th. All the hotels/motels in the County would be notified and have an opportunity to speak at the hearing Ms. LeClair explained that each City would be asked to approve a Resolution to Consent to Form the District and this Council could adopt a Resolution following the protest hearing. Each City would be given a specific assessment for each hotel/motel and would be asked to collect these fees along with the TOT.

In response to C. Rianda, Ms. LeClair stated that if the City voted to be part of the district, the hotels/motels in Belmont would be obligated to be part of the district. She said the assessment for non-participating cities had not been determined yet.

City Manager Kersnar stated that the three largest properties in Belmont had been contacted about this meeting. He stated he did not discuss the assessment idea with them.

In response to C. Cook, Ms. LeClair stated that they had received several legal opinions' that every City had to adopt a Resolution to form the district. She said any member in a participating City would not pay dues. If a City did not participate, the Convention Bureau would come up with a membership fee for that hotel/motel.

City Manager Kersnar stated that governmental action was necessary to ensure there were no free riders in the district and would force everyone to be part of the district. If there was enough of a protest then the district would not be formed.

City Manager Kersnar stated that because these were flat fees, it was an easy fee to collect with the Transit Occupancy Tax with very low administrative costs to the City.

C. Wright said he had been through this process. He said there had to be a threshold of comfort to move forward with this district. He said there were huge benefits to this process and he was supportive.

C. Rianda expressed her concern about forcing hotels to participate in a program they may not want to participate in. She said she thought the decision to participate should be left with the individual hotels.

Ms. LeClair said that one of the benefits for Belmont would be to be featured in collateral materials advertising the various local businesses. She stated that the hotels would add this fee to the room rate so it would not impact the hotel. She said the agreement would be renewed annually.

In response to City Manager Kersnar, Ms. LeClair explained that she did not expect the Council to adopt the Resolution at this time, but if there was interest, they would like to include all the properties in Belmont in their mailing to advise them of the hearing.

Council directed staff to have the Resolution put on the Consent Calendar for approval at a later meeting.

ADJOURNMENT – at this time, being 10:10 P.M., this meeting was adjourned.

Kathy Kern
Belmont City Clerk
Meeting Tape Recorded

Tape No. 479